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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,599	08/27/2001	Gust H. Bardy	032580.0029.UTL	2599
28075	7590	03/04/2004	EXAMINER	
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			JASTRZAB, JEFFREY R	
		ART UNIT	PAPER NUMBER	
		3762	15	
DATE MAILED: 03/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/940,599	BARDY ET AL.
Examiner	Art Unit	
Jeffrey R. Jastrzab	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 14 February 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 83-122 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 95-122 is/are allowed.
- 6) Claim(s) 83-88, 90 and 92-94 is/are rejected.
- 7) Claim(s) 89 and 91 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-11/17/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Invention XII in Paper No. 14 is acknowledged.

### ***Specification***

The attempt to incorporate subject matter into this application by reference to references A1-A34 in the information disclosure statement filed 11/17/03 is improper because an incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (see 35 U.S.C. 132(a)).

### ***Information Disclosure Statement***

The information disclosure statement filed 11/17/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, the EP, WO and Search report documents have not been considered absent the corresponding copied. The US Patent documents have been considered.

The information disclosure statement filed on 11/17/03 does not fully comply with the requirements of 37 CFR 1.98 because: copies of the documents have not been supplied. Since the submission appears to be *bona fide*, applicant is given ONE (1)

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MONTH from the date of this notice to supply the above mentioned omissions or corrections in the information disclosure statement. NO EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 CFR 1.136(a) OR (b). Failure to timely comply with this notice will result in the above mentioned information disclosure statement being placed in the application file with the noncomplying information **not** being considered. See 37 CFR 1.97(i).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 83 and 85, are rejected under 35 U.S.C. 102(b) as being anticipated by Meltzer, US 5,645,586. Note that the term "elongated" is a relative term deemed to be met by the Meltzer structure.

Claims 83, 84, 86-88, 90 and 92-94 are rejected under 35 U.S.C. 102(b) as being anticipated by Hauser et al., US-5,513,926.

***Allowable Subject Matter***

Claims 89 and 91, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 95-122 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (703) 308-2097. The examiner can normally be reached on Monday through Wednesday and Friday from 5:30am to 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes, can be reached on (703) 308-5181. The fax phone number for this Art Unit is (703) 872-9306.



Jeffrey R. Jastrzab  
Primary Examiner  
Group 3762

March 3, 2004